

therefor such person or a third person will engage in sexual conduct with him or her;

He or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.²

(The) PERSON WHO IS PATRONIZED means

Select appropriate alternative:

the person with whom the defendant engaged in sexual conduct;

the person with whom the defendant was to have engaged in sexual conduct pursuant to the understanding;

the person who was solicited or requested by the defendant to engage in sexual conduct.³

SEXUAL INTERCOURSE means any penetration, however slight, of the penis into the vaginal opening. In other words, any penetration of the penis into the vaginal opening, regardless of the distance of penetration, constitutes an act of sexual intercourse. Sexual intercourse does not necessarily require erection of the penis, emission, or orgasm. ⁴

² Penal Law § 230.02 (1).

³ Penal Law § 230.02 (2).

⁴ The statutory definition has been amplified to accord with decisional law. See Penal Law § 130.00(1) and *People v. Liberta*, 64 NY2d 152, 169 (1984); *People v. Edwards*, 173 A.D. 375 (2d Dept. 1916); *People v. Berardicurti*, 167 A.D.2d 840 (4th Dept. 1990); *People v. White*, 185 A.D.2d 472 (3rd

[ORAL SEXUAL CONDUCT means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.^{5]}

[ANAL SEXUAL CONDUCT means conduct between persons consisting of contact between the penis and anus.^{6]}

[AGGRAVATED SEXUAL CONDUCT:

*Note: The statute includes “aggravated sexual conduct,” as that term is “defined in [Penal Law] section 130.00.” Penal Law § 130.00, however, does not define the term “aggravated sexual **conduct**.” Rather, it defines the term “aggravated sexual **contact**.” If the Court decides that “aggravated sexual contact” should be charged, that definition is:*

“Aggravated sexual contact” means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis, rectum or anus of a child, thereby causing physical injury to such child.⁷

In order for you to find the defendant guilty of this crime, the People are required to prove, from all the evidence in the case, beyond a reasonable doubt, each of the following three elements:

1. That on or about (date) , in the County of (County) , the defendant, (defendant's name)⁸ was eighteen (18) years old or more;

Dept. 1992); *People v. Williams*, 259 A.D.2d 509 (2d Dept. 1999).

⁵ Penal Law § 130.00 (2)(a).

⁶ Penal Law § 130.00 (2)(b).

⁷ Penal Law § 130.00(11).

⁸ When the defendant is charged in whole or in part as an accomplice, insert: “personally, or by acting in concert with another person.” See Accomplice charge.

2. That the defendant patronized a person for prostitution and that person was less than thirteen (13) years old; and
3. That the defendant engaged in:

Select appropriate alternative(s):

sexual intercourse [or]
oral sexual conduct [or]
anal sexual conduct [or]

[aggravated sexual conduct /
aggravated sexual contact]

with the person patronized.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt any one or more of those elements, you must find the defendant not guilty of this crime.